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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,972

05/23/2006

Kyoko Ishimoto

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WASHINGTON, DC 20006-1021

EXAMINER

GWARTNEY, ELIZABETH A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

09/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,972	Applicant(s) ISHIMOTO ET AL.	
	Examiner Elizabeth Gwartney	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060523;20060711;20080616</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Saito et al. (EP 1 364 585 A1).

Regarding claims 1-2 and 4, Saito et al. disclose an acidic protein food including a beverage that comprises acid- soluble soybean protein and chitosan (i.e. water soluble polysaccharide) (Abstract, [0012]-[0017], [0029], p. 7/Example 2, p. 12 /Example 10).

Regarding claim 3, Saito et al. disclose all of the claim limitations as set forth above. Saito et al. also disclose the acidity of the acidic protein food or drink is 3.8 (p. 12/Example 10).

Regarding claim 5, Saito et al. disclose a soybean powder comprising an acid-soluble soy protein and chitosan (i.e. water soluble polysaccharide) (Abstract, [0012]-[0017], p. 7/Example 2).

Regarding claim 6, Saito et al. disclose an acid-soluble protein material comprising chitosan (i.e. water soluble polysaccharide) (Abstract, [0012]-[0017], p. 7/Example 2). Given that Saito et al. disclose an acid-soluble protein material identical to that presently claimed, it is clear that the acid-soluble protein material would inherently have reduced astringency.

Regarding claims 7-8, Saito et al. disclose all of the claim limitations as set forth above. Given that Saito et al. disclose a soybean powder identical to that presently claimed, it is clear

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that the soybean powder material would inherently prevent formation of dregs of cloud-type fruit juice.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Tsukuda et al. (US 2002/0142071) teach a soybean protein granule material comprising soybean protein coated with carbohydrate that can be dispersed in fruit juice

drinks. Tsukuda et al. do not teach the pH range of the fruit juice drinks.

-Ishimoto et al. (EP 1 537 787) teach an acid-soluble soy protein material comprising a soybean polysaccharide used to make acidic soy protein gels. Ishimoto et al. do

not disclose a powder material.

-Samato et al. (EP 0 666 034) teach a process for preparing fractionated soybean proteins soluble in acidic conditions. The reference does not teach an acidic protein food

or drink.

-Kepplinger et al. (WO 02/071872) teach an aerated food component comprising a fruit concentrate, an ionic hydrocolloid, an edible acid, a cation source, and a whipping

protein. Kepplinger et al. do not disclose an acid-soluble protein.

-Dimakou et al. (WO 98/42214) teach an edible film and coating for use as moisture

barrier in food comprising lipid and hydrocolloid. The reference does not teach a acid-soluble protein.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Gwartney whose telephone number is (571) 270-3874.

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The examiner can normally be reached on Monday - Thursday; 7:30AM - 5:00PM EST, working alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./

Examiner, Art Unit 1794

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1794